IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 19796 of 2005(F)

PETITIONER:

K.P. VINCENT, U.D. CLERK,
OFFICE OF THE EXECUTIVE ENGINEER,
HP-DIVISION NO.1, ANGAMALY
RESIDING AT KUTHOTTINGAL HOUSE,
BEHIND RC CHURCH ROAD, CHALAKUDY.

BY ADV. SRI.P.SREEKUMAR

RESPONDENTS:
----

1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY, FINANCE DEPARTMENT, GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

2. THE CHIEF ENGINEER (IRRIGATINO AND ADMINISTRATION) THIRUVANANTHAPURAM.

3. THE SECRETARY, KERALA PUBLIC SERVICE COMMISSION, PATTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
GOVERNMENT PLEADER SRI. P.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 19796/2005 F

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER NO. B3/10000/99 DT. 27/4/99.

EXT.P2. COPY OF THE APPLICATION FORM AND THE CERTIFICATE DT. 12/09/2001.

EXT.P3. COPY OF THE ORDER NO. B3/25010/02 DT. 18/2/05.

EXT.P4. COPY OF THE PROCEEDINGS OF THE EXE. ENGINEER II P DIVISION NO. 1 ANGAMALY DT. 31/1/05.

EXT.P5. COPY OF THE LETTER DT. 19/10/04 BY THE R2.

EXT.P6. COPY OF THE CERTIFICATE DT. 20/10/04 BY THE EXE. ENGINEER.

EXT.P7. COPY OF THE MEMO DT. 3/3/05 BY THE R3.

EXT.P8. COPY OF THE EXPLANATION DT. 17/3/2005 TO THE R3.

EXT.P9. COPY OF THE ORDER NO. R1A(3)/7608/04/GW DT. 17/5/05.

EXT.P10. COPY OF THE LETTER DT. 26/5/05 BY THE R2 TO THE R3.

RESPONDENT'S EXHIBITS **NIL**

True copy

tga

K.BALAKRISHNAN NAIR, J.

W.P.(C) No. 19796 of 2005-F

Dated this the 24th day of July, 2007.

J U D G M E N T

The petitioner was an Upper Division Clerk, working under the second respondent. He was promoted as UDC, on 31-7-1998. He was reverted on 5-10-2000. The said order was challenged before this court and this court directed the consideration of the claim of the petitioner. While so, the Public Service Commission invited applications for the post of Divisional Accountant. Upper Division Clerks with one year's experience and total service under the Government for five years were eligible to apply for that post. The last date for receipt of the applications was 19-9-2001. The petitioner submitted his application on 11-9-2001. At the relevant time, he was only a Lower Division Clerk. Later, the petitioner was promoted as UDC with retrospective effect from 1-3-2001. The petitioner was included in the provisional list. On finding that, on the date of submission of the application the petitioner was not a UDC, show cause notice was issued to him, his explanation was considered and he was removed from the list, by Ext.P9 order dated 17-5-2005. This writ petition is filed, challening that order and seeking appropriate reliefs.

2. The Public Service Commission has filed a counter affidavit, resisting the prayers in the writ petition. It is pointed out that the rank list

already expired on 22-2-2007.

3. Heard the learned counsel on both sides. On 11-9-2001, the date on which the petitioner submitted his application and on 19-9-2001, the last date for receipt of applictions, the petitioner was only a Lower Division Clerk. So, he could not have submitted a valid application. In other words, his application was incompetent and therefore, he is not eligible to be included in the rank list. The Public Service Commission has got yet another defence, to support Ext.P9. It is pointed out that the petitioner has regular service as UDC for 6 months. Even his date of promotion as UDC with effect from 1-3-2001 will not make him eligible to apply for the post. The earlier period between 1998-2000 was only provisional promotion, it is submitted. Whatever be that, the petitioner was not qualified on the last date for submission of applications. Therefore, I find no reason to interfere with Ext.P9. Accordingly, the Writ Petiton fails, and it is dismissed.

K.BALAKRISHNAN NAIR,
JUDGE.

MS